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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.                | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------------|------------------|
| 10/671,541  | 09/29/2003  | Ted Guidotti         | 018798-183                         | 7503             |
| 21839 7590 03/22/2007<br>BUCHANAN, INGERSOLL & ROONEY PC<br>POST OFFICE BOX 1404<br>ALEXANDRIA, VA 22313-1404 |             |                      | EXAMINER<br>STEPHENS, JACQUELINE F |                  |
|   |             |                      | ART UNIT<br>3761                   | PAPER NUMBER     |
| SHORTENED STATUTORY PERIOD OF RESPONSE  |             | MAIL DATE            | DELIVERY MODE                      |                  |
| 3 MONTHS  |             | 03/22/2007           | PAPER                              |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                                    |                                 |  |
|------------------------------|------------------------------------|---------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/671,541      | Applicant(s)<br>GUIDOTTI ET AL. |  |
|                              | Examiner<br>Jacqueline F. Stephens | Art Unit<br>3761                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/19/06.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6 and 10-22 is/are rejected.
- 7) ☒ Claim(s) 4,5,7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 12/19/06 have been fully considered but they are not persuasive.

Applicant argues the rear part 18b of the acquisition layer 18 of Guidotti does not correspond to the fluid receiving layer of claim 1. Applicant further argues there is no main function to transport liquid from the receiving area to another area of the product. The fluid receiving layer of claim 1 does not require any transporting of fluid. As broadly as claimed, the layer only requires that it is capable of receiving fluid. Layer 18b is capable of receiving fluid.

Applicant argues the storage layer 19 in Guidotti is not a distribution layer because if it was, then the back portion would not be that dry. The storage layer 19 is neither claimed nor described in the rejection of the claims as a distribution layer.

Applicant argues in view of the goal to keep the rear part dry, the rear part 18b of the acquisition layer 18 of Guidotti is effectively not in direct or indirect fluid contact with the front part. The claims only require the layers be in fluid contact. Layer 19 being a storage layer receives and retains fluid. It is in direct contact with layers 18a and 18b and so fluid retained by layer 19 would also be in direct contact with layers 18a and 18b. Therefore, layer 18b is in indirect fluid contact with layer 18a via both of the layers' association with storage layer 19.

Applicant argues that layer 20 is the distribution layer as disclosed by Guidotti. Applicant's reliance on layer 20 as the distribution layer suggests there can be only one distribution layer in the article. However, layer 18a receives and distributes fluid to underlying layer 19 (col. 4, lines 29-30), therefore it is considered a distribution layer since it is capable of performing a distribution function. The 'comprising' language used in the independent claims is inclusive or open-ended and does not exclude additional unrecited elements, compositional components, or steps.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6, and 10-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Guidotti et al. USP6123692.

As to claims 1, 3, 6, 10, 11, 16, and 17, Guidotti et al discloses an absorbent article as shown in Figures 1, 3, and 4 having a fluid receiving layer 18b, a fluid storage layer 19, a fluid distribution layer 18a (considered a distribution layer in that it distributes fluid to the underlying storage layer 19), and a fluid barrier layer 11,21. The fluid receiving layer 18b is arranged in at least the crotch area of the article in direct or indirect fluid contact with the fluid distribution layer 18a. The fluid storage layer 19, fluid receiving layer 18b, and fluid distribution layer 18a each have longitudinal end edges

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that extend along the longitudinal direction, and transverse end edges that extend along the transverse direction.

The fluid distribution layer 18a is arranged to extend in the crotch portion and in at least a substantial portion of one of the waist portion of the article and is absent in at least a substantial part of the opposite waist portion (Figure 3). The fluid barrier 11,21, is arranged at or in close proximity to the transverse end of the fluid receiving layer 18b located adjacent the crotch portion (Figures 3-5). The fluid barrier 21 extends at least a substantial part of the thickness of the fluid receiving layer 18A (Figures 4 and 5).

As to claims 2, the fluid receiving layer 18b is disposed in the crotch portion and in at least as substantial part of the rear portion (Figures 3-5 and col. 4, lines 9-23).

As to claims 12 and 13, Guidotti discloses the fluid barrier 21 comprises plastic, foam, or nonwoven materials (col. 2, lines 60-63).

As to claims 14 and 15, the claims are directed to a process of making the fluid barrier. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claims 18-20, and 22, Guidotti et al discloses an absorbent article as shown in Figures 1, 3, and 4 having two waist portions in the form of a front 9 and a rear 8, and between the two waist portions a crotch portion 6. The absorbent article has a longitudinal direction extending from one of the waist portion to the other of the waist portion and a transverse direction that extends perpendicularly to the longitudinal direction.

The article comprises an absorbent core including at least one fluid storage layer 19, at least one fluid distribution layer 18a (considered a distribution layer in that it distributes fluid to the underlying storage layer 19) overlapping and being in fluid contact with the fluid storage layer (Figures 3-5). The article comprises a fluid receiving layer 18b arranged in at least the crotch area of the article in direct or indirect fluid contact with the fluid distribution layer 18a and the fluid storage layer 19 as discussed in the Response to Arguments above. The fluid storage layer 19, fluid receiving layer 18b, and fluid distribution layer 18a each have longitudinal end edges that extend along the longitudinal direction, and transverse end edges that extend along the transverse direction. The article further comprises at least one fluid barrier layer 11,21 arranged to extend in the transverse direction of the absorbent article.

The fluid distribution layer 18a is arranged to extend in the crotch portion and in at least a substantial portion of one of the waist portion of the article and is absent in at least a substantial part of the opposite waist portion (Figure 3). The absorbent core has a thickness in the opposite waist portion that is less than a thickness in the crotch portion and the one waist portion (see Figures 4 and 5). The fluid barrier 11,21, is

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arranged at or in close proximity to one of the transverse end edges of the fluid receiving layer 18b located adjacent the crotch portion (Figures 3-5). The fluid barrier 21 extends at least a substantial part of the thickness of the fluid receiving layer 18A (Figures 4 and 5).

The limitation of promoting fluid flow from one area to another is directed to an intended. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

As to claim 21, see the rejection of claims 1 and 18, supra. The fluid distribution layer 18a is arranged to extend in the crotch portion and in at least a substantial portion of one of the waist portion of the article and is absent in at least a substantial part of the opposite waist portion (Figure 3). The limitation of promoting fluid flow from the crotch portion towards said one waist portion is directed to an intended use of the distribution layer. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

***Allowable Subject Matter***

4. Claims 4, 5, 7, and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.




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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F. Stephens  
Primary Examiner  
Art Unit 3761

March 15, 2007